

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CLEMON HUDSON,

Petitioner,

v.

WILLIAM HUTCHING, *et al.*,

Respondents.

Case No. 2:22-cv-01377-GMN-BNW

Order Directing Service of the Petition
and Denying Petitioner's Motion for
Appointment of Counsel

Clemon Hudson submitted a *pro se* 28 U.S.C. § 2254 habeas petition and has now paid the filing fee. (ECF Nos. 1-1, 4.) The court has conducted a preliminary review of the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Hudson has also submitted a motion for appointment of counsel. (ECF No. 1-3.) There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint

1 counsel is generally discretionary. *Id.* § 3006A(a)(2) (authorizing appointment of counsel
2 “when the interests of justice so require”). However, counsel is appropriate if the
3 complexities of the case are such that denial of counsel would amount to a denial of due
4 process, and where the petitioner is so uneducated that he is incapable of fairly
5 presenting his claims. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v.*
6 *United States*, 623 F.2d 54, 61 (9th Cir. 1980). Here, Hudson’s petition generally
7 presents his claims in a reasonably clear manner, and the legal issues do not appear to
8 be particularly complex. Therefore, the court denies the motion.

9 **IT IS THEREFORE ORDERED** that the Clerk of Court detach, file, and
10 electronically SERVE the petition (ECF Nos. 1-1, 1-2) on respondents.

11 **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney
12 General, as counsel for respondents and provide respondents an electronic copy of all
13 items previously filed in this case by regenerating the Notice of Electronic Filing to the
14 office of the AG only.

15 **IT IS FURTHER ORDERED** that the Clerk detach and file petitioner’s motion for
16 appointment of counsel (ECF No. 1-3).

17 **IT IS FURTHER ORDERED** that the motion for counsel is **DENIED**.

18 **IT IS FURTHER ORDERED** that respondents file a response to the petition,
19 including potentially by motion to dismiss, within **90 days** of service of the petition, with
20 any requests for relief by petitioner by motion otherwise being subject to the normal
21 briefing schedule under the local rules. Any response filed is to comply with the
22 remaining provisions below, which are entered pursuant to Habeas Rule 5.

23 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
24 in this case be raised together in a single consolidated motion to dismiss. In other
25 words, the court does not wish to address any procedural defenses raised herein either
26 in seriatum fashion in multiple successive motions to dismiss or embedded in the
27 answer. Procedural defenses omitted from such motion to dismiss will be subject to
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1 potential waiver. Respondents should not file a response in this case that consolidates
2 their procedural defenses, if any, with their response on the merits, except pursuant to
3 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
4 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
5 do so within the single motion to dismiss not in the answer; and (b) they will specifically
6 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
7 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
8 defenses, including exhaustion, should be included with the merits in an answer. All
9 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

10 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
11 specifically cite to and address the applicable state court written decision and state
12 court record materials, if any, regarding each claim within the response as to that claim.

13 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the
14 answer, motion to dismiss, or other response to file a reply or opposition, with any other
15 requests for relief by respondents by motion otherwise being subject to the normal
16 briefing schedule under the local rules.

17 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
18 herein by either petitioner or respondents be filed with a separate index of exhibits
19 identifying the exhibits by number. The parties will identify filed CM/ECF attachments by
20 the number or numbers of the exhibits in the attachment.
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DATED: 27 October 2022.


GLORIA M. NAVARRO
UNITED STATES DISTRICT JUDGE